

**NATIONAL ALLIANCE FOR
ACCESSIBILITY, INC., a Florida
not for profit corporation, and
DENISE PAYNE, individually,**

Plaintiffs,

vs.

**W&K OF ASHEVILLE, LLC, a North
Carolina Domestic Corporation,**

Defendant.

THIS MATTER is before the Court on the Defendant's Motion to Dismiss [Doc. 9] and the Magistrate Judge's Memorandum and Recommendation [Doc. 19] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the motion to dismiss and to submit a recommendation for its disposition.

On November 26, 2012, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed conclusions of law

in support of a recommendation regarding the Defendant's motion. [Doc. 19]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.¹

After a careful review of the Magistrate Judge's Recommendation [Doc. 19], the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's Motion to Dismiss should be granted and the Plaintiffs' Complaint should be dismissed for lack of standing.

¹ In addition to recommending the dismissal of this action, the Magistrate Judge ordered the Plaintiffs to show cause why they should not be sanctioned. [See Memorandum and Recommendation, Doc. 19 at 15]. The Plaintiffs filed a Response to the Memorandum and Recommendation on November 30, 2012. [Doc. 20]. The Plaintiffs' Response, however, addresses only the show cause portion of the Magistrate Judge's Memorandum and Recommendation and does not contain any objections to the recommendation that their Complaint be dismissed. Indeed, in their Response, the Plaintiffs explicitly concede that the issue of the Plaintiffs' standing to sue "is not before the Court at this time" and that the sole issue remaining before the Court was "whether Plaintiffs and/or Plaintiffs' counsel should be sanctioned under Rule 11." [Id. at 10].

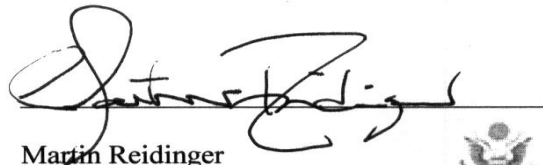
ORDER

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 19] is **ACCEPTED**, the Defendant's Motion to Dismiss [Doc. 9] is **GRANTED**, and this case is hereby **DISMISSED**.

IT IS FURTHER ORDERED that the Magistrate Judge shall continue to exercise jurisdiction in this matter for the purpose of determining whether the Plaintiffs and/or their counsel should be sanctioned pursuant to Rule 11 and/or the Court's inherent power.

IT IS SO ORDERED.

Signed: January 3, 2013


Martin Reidinger
United States District Judge

